

Email dated June 7, 2021 from Eric Allmon regarding comments on IP, Remand Order, and Information request from the TCEQ regarding permit application TX0138347

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HI all. Forwarding additional information from Mr. Allmon.

Also, in a separate email he asked "if EPA Region 6 staff have time available in the near future to discuss programmatic issues with the Texas water quality program. I will be out a fair amount of July, and my preference would be to find a time to meet in June."

I know we discussed how the Division wanted to approach these type requests for a meeting in a recent internal call. However, I can't remember where we landed. Do you want me to first offer a "lawyer to lawyer" call - after which I can relay the concerns to you and get back to Mr. Allmon (or whomever the requestor is), or do you prefer to meet as a group and hear the concerns first hand. I am happy to proceed either way. If you'd like to hear the concerns first hand, I can make it clear to Mr. Allmon that the call is a chance for him to present his concerns and that we'll need to discuss our responses internally and respond at a later date. I know Rich was concerned about staff being put on the spot and/or feeling the need to offer an immediate answer to his questions. Let me know how you'd like to proceed. Thanks! Renea

From: Eric Allmon <eallmon@txenvirolaw.com>
Sent: Monday, June 07, 2021 3:04 PM
To: Ryland, Renea <Ryland.Renea@epa.gov>
Cc: David Frederick <dof@lf-lawfirm.com>; Rick Lowerre <rl@lf-lawfirm.com>
Subject: Comments On TCEQ IPs & Update on Harbor Island Discharge

Renea,

I wanted to update you on two things.

First, attached is a set of comments that was filed last week regarding TCEQ's review of its Water Quality Standards Implementation Procedures. From TCEQ's recent briefing, I would understand that those procedures are part of

Texas' continuing planning process documents, and ultimately subject to EPA review and approval or disapproval. The comments cover the Tier II issues we've previously discussed. As we've discussed, TCEQ's implementation of its water quality standards worsens the problem of the lack of an objective standard in the rules for "de minimis". If TCEQ does not correct the Implementation Procedures with regard to this issue in TCEQ's review, then we feel that EPA should address the issue once it is before the EPA. Of course, the triennial review will also present the opportunity to directly address the Tier II significance threshold issue in the language of the water quality standards themselves.

Also, we have previously mentioned the application of the Port of Corpus Christi Authority of Nueces County for a large desalination brine discharge permit, in which the administrative law judges had recommended denial of the permit. TCEQ's Commissioners considered that application and recommendation at a public meeting several weeks ago, and made a decision to remand the application to the State Office of Administrative Hearings for further hearing on the issues where the applicant had not met its burden of proof. With regard to salinity, that permit is now much less stringent than the draft permit issued earlier which would have been available had EPA exercised its right of review at that stage. The permit certainly continues to be of concern with regard to the magnitude of the discharge (which TCEQ is considering de minimis), and the impacts that the discharge will have in the sensitive estuarine environment where it is proposed to be located. The remand instructions allow some time for the applicant to submit more information, then time for the Executive Director to review that information prior to a recommencement of the hearing. Considering that the proposed permit is less stringent than the draft permit, we do feel like under the MOA this is a circumstance where EPA would have some ability to monitor and offer input on the permit, and the upcoming stage of Executive Director review may present an opportunity to do so.

Thanks,

Eric Allmon

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